

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.1149 OF 2014

Hashmukh Ranawat

..Appellant

V/s.

Municipal Corporation of Greater
Mumbai & Anr.

..Respondents

Ms.Sukhada Wagle-Kamat a/w Ms.Apurva Gupte I/by Hariani
& Co. for the Appellant.

Mrs.M.M. More for Respondent No.1-BMC.

CORAM : M. S. SONAK, J.

DATE : 20 JANUARY 2017.

P.C.

1. Heard Ms.Sukhada Wagle-Kamat for the Appellant
and Ms.M.M.More for Respondent No.1. i.e. Municipal
Corporation of Greater Mumbai (MCGM).

2. The challenge in this appeal is to the order dated 13
October 2014, by which the City Civil Court, Mumbai has
dismissed the Notice of Motion taken out by the appellant
(Original Plaintiff) seeking a restraint upon MCGM from
implementing its notice dated 24-03-2012 seeking to demolish

portion of the appellants premises.

3. This Court by order dated 08 June 2016, admitting the appeal, continued the ad-interim relief which was already in operation by making the following order.

1. *The above Civil Application has been filed seeking stay of the impugned order dated 13.10.2014 passed in Notice of Motion No.838 in LC Suit No.839 of 2012. There is ad-interim order operating in the above Civil Application since 06.01.2015. It is required to be noted that the Learned Judge of the City Civil Court whilst dismissing the Notice of Motion has observed whilst dealing with point Nos.1 to 3 to the following effect :*

“Plaintiff has come before the Court with specific case that notice itself is illegal on the ground that necessary permission is obtained by plaintiff from corporation for carrying on the said construction. But the case of corporation is that plaintiff has carried out construction in the open space which is beyond sanctioned plan and earlier it was demolished.

During the course of his argument learned advocate Shri. Dalal for plaintiff has pointed out as to how there is sanction from the concerned authority and has also relied upon the provisions of MRTP Act as well as

MMC Act. It is important to note that the case made out by plaintiff is that he has carried out construction as per the sanctioned plan and it is not beyond that and for that plaintiff has relied upon copy of plan. But, it is important to note that grievance of corporation is that said construction is carried out in open space that too by reconstruction of earlier demolished structure. In such circumstances, I hold that though grounds are made out by plaintiff for interim injunction as discussed earlier, but considering the submissions advanced and provisions of law and documents on record, I hold that this Court will required to go into details to find out whether the construction is carried out in pursuance of the said plan or not particularly when the grievance is raised that it is carried out in the open space and for that this Court is required to go into details of everything before drawing any conclusion. Considering the action of earlier demolition and contents of the affidavit and reply shows that construction is on open space, I hold that it would not be proper to grant any relief as plaintiff has failed to make out prima facie case. I therefore answer point no.1 in negative.

In the given set of circumstances, I hold that balance of convenience does not lie in favour of plaintiff and no irreparable loss would be caused to the plaintiff if injunction as sought for is not granted. Therefore, I answer these

two points accordingly.”

The Learned Judge therefore had come to a conclusion that ground for grant of interim injunction was made out and has further observed that the Court is required to go into details of everything before drawing any conclusion, who thereafter as indicated above has dismissed the Notice of Motion.

2. It is also required to be noted that the notice under Section 354 of the MMC Act is also based on the alleged demolition which took place in the year 2009 as also inspection carried out in the year 2012. The order passed by the Assistant Municipal Commissioner also proceeds on the said basis. It seems that the Applicant/Appellant had been issued a commencement certificate on 03.02.2010 in terms of the plan which was submitted at page No.49 and which plan was also sanctioned on 03.02.2010. However, significantly the notice as well as the order passed by the Assistant Municipal Commissioner, Cward do not refer to the sanctioned plan. As observed by the Learned Judge of the City Civil Court, the matter would undoubtedly require further investigation at the trial stage. In my view, therefore, the ad-interim order which is in operation would have to be continued pending the above Appeal from

Order. It is clarified that the pendency of the Appeal from Order would not be an impediment for the Trial Court to proceed with the suit in question. The suit in question being LC Suit No.839 of 2012 is expedited. The Civil Application is accordingly disposed of.

4. As noted above, in the impugned order, the Trial Judge has held that the appellant has made out grounds sufficient for grant of interim injunction. However, learned Trial Judge declined interim injunction by observing that the Court will be required to go into the details to find out whether the construction is carried out in pursuance of the plan produce or not. If, such exercise was required to be undertaken in details, then, in the meanwhile some protection was necessary, as otherwise, pending such determination, the MCGM would have proceeded with his action for demolition. On this short ground, this appeal is required to be allowed.

5. However, Ms. More the learned counsel for the MCGM submits that this is a case where the appellant has reconstructed the disputed structure, after, it was legitimately

demolished on one occasion by MCGM. Ms. More points out that the reconstructed structure is in the open space and therefore, learned Trial Judge was right in declining protection to such a structure.

6. The impugned order is perused, the learned Trial Judge has himself observed that the appellant had made out grounds for grant of interim injunction. If this be the position, pending determination of the issues in details some protection was necessary to the appellants. The balance of convenience, in the situation of this kind, was in favour of grant of protective relief rather than its refusal.

7. Be that as it may, Ms. Wagle-Kamat submits that the interim protection is in operation since 2014. The Trial in the suit is on the verge of the commencement, as since, the appellant has filed his affidavit in lieu of examination-in-chief. If this be the position, then it will be appropriate if the impugned order is set aside. The ad-interim relief which has been in operation since 2014 is directed to operate until the

final disposal of the suit. The suit is ordered to be disposed of as expeditiously as possible and in any case and within a period of one year from today. The appellant was not unnecessarily delay in the progress of the suit. Besides, the appellant shall also itself maintain status-quo in respect of the suit structure and the suit premises.

8. The impugned order is set aside. The ad-interim order in operation since 2014 and which was continued by this Court in its order dated 08 June 2016 is directed to continue until the disposal of the suit. The suit is expedited the suit should be completed within one year from today. The appellant is directed to maintain status-quo as directed.

9. It is clarified that the observations in impugned order, the order dated 8 June 2016 and this order are only *prima-facie* and the Trial Court need not be influenced any of the observations therein at this stage of final disposal of the suit. Suit has to be disposed of in accordance with law on its own merits.

10. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)